

**DRAFT**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FREMONT  
AMENDING FREMONT MUNICIPAL CODE SECTIONS 8-22135, 8-22171, 8-22173,  
8-22174, 8-22175, 8-22176 AND 8-22177, ADDING SECTION 8-22170(H), AND  
DELETING SECTIONS 8-22135.05 AND 8-22171(M), ALL RELATED TO  
RESIDENTIAL CONDOMINIUM CONVERSIONS**

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WHEREAS, for the past few years cities and counties throughout the State of California, including the City of Fremont ("City"), have been experiencing a surge in residential condominium conversion applications; and

WHEREAS, condominium conversions have both advantages and disadvantages: they provide entry level housing opportunities for first time homebuyers, assist redevelopment of declining neighborhoods, and provide opportunities for homeowners who are "downsizing" their household; at the same time, they may displace long-time tenants and drive up housing and land costs; and

WHEREAS, the City's general plan encourages the development of home ownership opportunities but also describes the need for the City to provide diverse housing stock affordable and appropriate for a variety of Fremont residents at all economic levels; and

WHEREAS, the City has an interest in ensuring that all conversions of rental units to ownership units are accomplished in such a manner as to protect the safety and investment of those persons purchasing the ownership units as well to protect and minimize impacts on existing rental tenants; and

WHEREAS, the City Council of the City of Fremont adopted Resolution No. 2005-110 on December 6, 2005, stating its intention to study and revise its existing condominium conversion regulations to ensure that the City is considering and protecting all interests related to conversions in the most effective manner possible; and

WHEREAS, the City finds, among other things, that the conversion process which divides the ownership interest in a building and property into multiple fractions will make redevelopment of buildings less likely and have the effect of extending and prolonging the use of older buildings, and that it is therefore critical the City review the physical condition of properties prior to conversion to ensure that they are structurally sound and brought into compliance, to the extent possible, with current building code standards and regulations; and

WHEREAS, because it is generally acknowledged that California, including the City of Fremont, will experience moderate to severe earthquakes in the foreseeable future, the City supports and encourages increased efforts to reduce earthquake hazards. The City finds that "soft story" residential buildings, as defined in Section 7-10115 of the Fremont Municipal Code, pose a particular seismic hazard to residents, and adopts by reference and incorporates herein the findings set forth in California Health and Safety Code Section 19160 pertaining to soft story residential structures. Because the conversion process will prolong the life of soft story residential structures, the City finds it necessary to impose certain safety related building regulations upon such; and

WHEREAS, the Planning Commission held two public hearings, June 8 and July 27, 2006, to review and consider this ordinance and make recommendations to the City Council.

NOW THEREFORE, the City Council of the City of Fremont does ordain as follows:

**Section 1.** Fremont Municipal Code Section 8-22135, "Condominium, community apartment, stock cooperative and townhouse conversion projects," is repealed and reenacted to read in its entirety as follows:

**Sec. 8-22135. Condominium conversion; residential projects.**

(a) "Residential Condominium Conversion Project" defined. As used in this section, a "Residential Condominium Conversion Project" consists of the conversion of dwelling units on a single lot to a condominium, community apartment, townhouse or stock cooperative form of ownership.

(b) Findings; Purpose.

Cities and counties throughout California are experiencing an increase in residential condominium conversion applications. This chapter is enacted to revise the City's existing requirements and procedures for the control and approval of conversion of existing multiple-family residential housing to residential condominium projects. By their unique character and requirements, conversions differ specifically from other subdivisions. On the one hand, conversions may support the City's policy to encourage home ownership opportunities. On the other hand, conversions may have significant social, economic, and safety impacts. Conversions may affect the balance between rental and ownership housing within the City, and thereby reduce the variety of individual choices of tenure, type, price and location of housing; increase overall rents; decrease the supply of rental housing for all income groups, and displace individuals and families. In addition, conversion to multiple ownership prolongs the life of a building thereby increasing the need that it be brought into conformance with current building and safety codes.

This section is enacted to ensure that:

- (1) Residential condominium conversion projects are consistent with the housing element of the general plan and with state law;
  - (2) The availability of rental units is generally maintained;
  - (3) Residential condominium conversion projects meet certain physical and visual standards to ensure the public health, safety and welfare, and that purchasers of dwelling units in conversion projects are informed as to the physical conditions of the structure and on-site facilities;
  - (4) A homeowners' association is established to ensure a mechanism for funding the maintenance and replacement of all structural and operational components of the condominium project, including the structures, common spaces and facilities; and
  - (5) Consistent with the Subdivision Map Act, tenants have been provided with adequate notice of the conversion, information relating to relocation, relocation benefits, and the opportunity to purchase the residential unit being converted.
- (c) Applicability, exemptions. This section applies to residential condominium conversion projects creating three or more units. Residential condominium conversion projects which have a recorded final condominium map and which have a current, valid California Department of Real Estate public report approval as of the date this section is effective are exempt from the provisions of this Section, but shall not otherwise be exempt from the provisions of the Code.
- (d) Conditional use permit required.
- (1) No person shall undertake a residential condominium conversion project without first obtaining a conditional use permit, as provided pursuant to Article 25, from the Planning Commission, or upon referral, the City Council. However, the application requirements set forth in subsection (e), below, are in place of the requirements of Article 25.
  - (2) Unless otherwise exempt, a tentative and final tract map shall be required for all condominium conversion projects creating three or more condominiums as defined in Section 783 of the California Civil Code, a community apartment project containing three or more parcels, or for the conversion of a dwelling to a stock cooperative containing three or more dwelling units.
  - (3) In addition to other conditions, a use permit shall require the recordation of an agreement, in a form approved by the City, related to inclusionary units as required by subsection (f)(2), below.
  - (4) The approving authority may not waive or modify a requirement of subsection (f), below, unless it finds, by substantial evidence, all of the following: that the modification or waiver will not be materially detrimental to the proposed

residents of the property or to residents of surrounding properties, or to the public health or safety, and that the modification or waiver helps implement the goals of the housing element.

- (5) In Planned District (P) zones, the planned district minor amendment process may not be used for the purpose of varying from the requirements as set forth in subsection (f). A Planned District Minor Amendment may be required in addition to a Conditional Use Permit in such zones to address varying setback standards attributable to a condominium subdivision.
  - (6) For a condominium conversion project for which a tentative map has been approved, but for which a final map has not been recorded, a conditional use permit for such condominium conversion shall expire concurrently with the expiration of the tentative map.
- (e) Applications. Each application for a condominium conversion shall include the following:
- (1) Accurately dimensioned site plans showing the property lines, existing topography of the site, and the location of all existing easements, structures, setbacks, parking, trash enclosures, fences and other improvements. A California-licensed engineer and/or land surveyor must prepare such site plans.
  - (2) A list showing the percentages of open space, building coverage, parking and circulation areas. Parking information shall include the total number of parking spaces, covered and uncovered spaces, compact spaces, guest spaces and accessible parking spaces.
  - (3) Scaled development plans showing typical floor plans and building elevations. A California-licensed architect must prepare such plans.
  - (4) An inspection document, prepared by a team of licensed professionals (i.e., architects, contractors, engineers and other disciplines appropriate to the inspection), or other professional(s) as approved by the Community Development Director, evaluating the physical conditions of the development (including residential units and common areas) such as the foundation, wall sections, pest damages and sound insulation, and including any deficiencies or deviations from conformance with current applicable codes in electrical, plumbing, structural integrity, smoke detectors, mechanical equipment (including but not limited to heating and air conditioning and elevators), and security regulation standards. This document shall include a statement regarding remaining years of viable use for such items, including but not limited to the roofing system and mechanical equipment. The Community Development Department shall establish a template

or outline for the inspection document to ensure that all relevant conditions are evaluated.

- (5) A statement of repairs, improvements and architectural changes the applicant intends to make before conveyance of the units, and plans showing all of such.
  - (6) The proposed organizational documents. In addition to such covenants, conditions and restrictions that may be required by the Department of Real Estate of the State of California pursuant to Title 6 (Condominiums) of the Civil Code, or other state laws or policies, the organizational documents shall provide for the following:
    - a. Conveyance of units;
    - b. Assignment of parking and management of common areas within the Project;
    - c. A proposed annual operating budget containing a reserve fund to pay major anticipated maintenance, repair, or replacement expenses; and indicating the association fees needed for the operating budget and the reserve fund;
    - d. A pro forma balance sheet of the association;
    - e. A provision that the annual assessments to members of the association shall provide for penalties for late payments and reasonable attorneys fees and costs in the event of default by members;
    - f. Provisions to allow the association to terminate the contract of any person or organization engaged by the developer to perform management or maintenance duties after the association assumes control of the project or anytime thereafter.
  - (7) A detailed written statement that explains how the conversion project proposes to address each of the items listed in subsection (f) below.
  - (8) Two copies of a current preliminary title report.
  - (9) Any other information deemed necessary by the Planning Director.
- (f) Requirements. Residential condominium conversion projects shall conform to applicable standards and requirements of local and state codes, the Subdivision Map Act, and the following:
- (1) Zoning and General Plan. The residential use and density shall be consistent with the general plan land use designation and zoning district in which the project is located. If project density, taking into account an allowance for prior project dedications, exceeds the currently allowable density, prior dedications of land for public rights-of-way may be included in site area to determine density.

(2) Inclusionary housing. A residential condominium conversion with seven or more residential units is subject to the inclusionary housing requirements of Article 21.7.

(3) Noise and vibration. The interior and exterior sound transmission standards shall be those in effect at the time of conditional use permit approval, pursuant to California Code of Regulations Title 24, Part 2, California Building Code Appendix, Chapter 12, Division IIA, "Sound Transmission Control," and City Subdivision Ordinance, Title VIII, Chapter 1, Article 5. All mechanical equipment, including appliances, which are a source of vibration or noise, shall be shock-mounted and isolated from the floor and ceiling to minimize the transmission of vibration and noise.

(4) Utilities.

- a. Each dwelling unit shall have separate gas and electric metering. Each unit shall have its own panel board for all electrical circuits which serve the unit.
- b. Each dwelling unit shall have separate water service metering. A water shut-off valve shall be provided for each unit or for each plumbing fixture.

(5) Trash enclosures. Trash enclosures shall be provided in accordance with FMC Section 8-22155.

(6) Parking. The project must comply with the off-street parking and loading requirements of Article 20, and with City standards for private streets.

(7) Storage space. The project must include at least 100 cubic feet of storage space for each residential unit (excluding interior closet space). Storage space shall be waterproof and lockable and may be located in such areas as garages, carports, enclosed balcony closet areas, or commonly owned and accessible storage areas.

(8) Laundry facilities. Laundry facilities shall be provided in each unit, or, if common laundry areas are provided, such facilities shall consist of not less than one automatic washer and dryer for each five (5) units or fraction thereof.

(6) Smoke alarms. Smoke alarms shall be installed in individual units and in common hallways, subject to approval by the building and safety division. Smoke alarms shall be interconnected and shall receive their primary power from the building wiring and shall be equipped with a battery backup.

(10) Repairs and restoration. All exterior common areas shall be refurbished to a condition reasonably acceptable to the Community Development Director or designee. "Reasonably acceptable" shall mean that the following items shall be functional for their purpose and be repaired and/or replaced to ensure a relatively maintenance-free period of at least ten years from the date of conditional use permit approval:

- a. Vehicular and pedestrian ways, including cracked, uplifted, depressed or otherwise damaged or dilapidated pavement sections.
  - b. Landscaping, including but not limited to plant materials, irrigation systems, fencing, benches, play equipment, arbors, trellises, fountains, and similar features.
  - c. Utility services, including but not limited to water, sanitary sewer, storm drainage, gas, electric, and cable or satellite facilities and their appurtenant meter boxes, vaults and screening devices.
  - d. Accessory structures, including but not limited to trash enclosures, storage buildings, pools, and equipment enclosures.
  - e. Roofing systems and building exteriors including but not limited to roofing and siding materials, glazing, and chimneys.
- (11) Electrical. Electrical system grounding and equipment grounding shall be provided and electrical receptacle protection shall be upgraded to include ground fault circuit interrupter (GFCI) protection. GFCI protection shall comply with the prevailing code requirements.
- (12) Security. The condominium project shall be modified to comply with the building security regulations set forth in the Chapter 2 of Title VII this Code.
- (13) Structural Standards and Automatic Fire Extinguishing Systems (AFES). All condominium conversion residential projects shall be evaluated for compliance with current building and fire codes and local ordinances. The City strongly encourages that compliance be achieved as part of the project. If the applicant declines to make such improvements, the applicant shall fully disclose to potential buyers the lack of such improvements on a form and in a manner reasonably acceptable to the City.
- (14) Earthquake hazard reduction requirements in existing wood frame residential buildings with soft, weak or open-front walls. All "soft story" residential buildings, as defined in Section 7-10115 of this Code, must comply with the provisions and retrofit standards set forth in Chapter 10, Earthquake Hazard Reduction Requirements in Existing Wood Frame Residential Buildings with Soft, Weak or Open-Front Walls, Sections 7-10100 et seq., except that Sections 7-10125 through 7-10150 of Chapter 10 do not apply to residential condominium conversions. In addition, Section 7-10180 does not apply to residential condominium conversions.

(15) Warranties. The project owner shall provide to each buyer, or to the homeowners' association, as applicable, a one-year warranty on all of the following: appliances in each unit or other common area facility, electrical and plumbing, ventilation equipment, heating and air conditioning systems, and elevator(s) as applicable to the development.

(16) Homeowners' association.

- a. A homeowners' association shall be established in recorded Conditions, Covenants and Restrictions ("CC&Rs"). Such association shall be responsible for all common areas, including but not limited to landscaping, trash enclosures, plumbing, smoke alarms, electrical wiring, utility charges and building exteriors. The applicant shall provide an initial reserve fund for the association equal to three (3) years annual maintenance costs. The annual maintenance costs shall be as determined by the State Department of Real Estate regulations.
- b. For any project consisting of twenty or more dwelling units, the association shall be required to contract with a professional management firm to handle management operations and collection procedures. A professional management firm means a business entity that is licensed or otherwise accredited consistent with State law as a property management organization or an individual who is certified in managing a condominium or other project within the scope of this section.

(17) Tenants' notices and rights; Relocation.

- a. Tenants' notices and rights. The applicant shall give tenants and prospective tenants written notice of the intention to convert to condominiums as required by State law (Government Code Section 66427.1). In addition to offering tenants the right of first refusal to purchase, as required by State law, the applicant shall also:
  - i. Refrain from any rent increases during the 180-day notice period required by State law before termination of tenancy.
  - ii. Offer a five percent purchase price discount to any tenant who has resided in the unit in good standing for a minimum of two years prior to the date the written notice of intent to convert is provided pursuant to paragraph (17) a. above. Fewer cosmetic upgrades to the interior of units may be credited towards the purchase price discount, upon proposal by the applicant and approval by the Planning Commission, but in no case may common area facilities or health, safety, noise or vibration standards be compromised.



Examples of cosmetic upgrades include the quality of interior finishes such as countertops, flooring and wall/window coverings materials. Cosmetic upgrades may also include such items as warranted used instead of new appliances and refurbished rather than new wall cabinets. The City will provide a home ownership education program for those tenants who elect to contract for purchase.

b. Relocation assistance.

- i. Information to tenants. The applicant shall provide relocation information to tenants, updated monthly, consisting of data indicating the current and continually available, competitively priced, decent, safe and sanitary dwelling units the City of Fremont, and other adjacent or nearby cities as necessary.
- ii. Relocation subsidy. The applicant shall provide financial relocation assistance to each tenant who has resided in a unit in good standing for a minimum of one year prior to the date the written notice of intent to convert is provided pursuant to paragraph (17) a. above. The subsidy shall be limited to one assistance payment per unit. An assistance payment shall equal three times the monthly rent in effect at the time notice is given. This assistance cannot include the first or last months' rent or cleaning or security deposit. The assistance payment is due to the tenant within five days after the tenant vacates the unit, or sooner if agreed in writing by both parties.
- iii. Special relocation subsidy for senior tenants. For purposes of this subdivision, a senior is defined as a person who is 62 years or older on the date the written notice of intent to convert is provided pursuant to paragraph (17) a. above. When a senior tenant has resided in a unit in good standing for a minimum of two years prior to the date the written notice of intent to convert is provided pursuant to paragraph (17) a. above, the applicant shall offer the senior tenant the choice of either receiving (1) a relocation assistance payment equal to five times the monthly rent in effect at the time notice is given, or (2) an extended lease for up to five additional years. If the senior tenant chooses to extend the lease, the amount of relocation subsidy shall be reduced by one monthly payment for each year the lease is extended, so that if the senior tenant extends the lease for five years, he or she shall receive no relocation assistance payment at the end of such term. This assistance cannot include the first or last month's rent or cleaning

or security deposit. The subsidy shall be limited to one payment per unit. In the event of the death of a qualifying senior tenant after the notice is given, the special relocation benefits shall inure to any other resident member of the household who was living with the senior tenant at the time notice was given.

- iv. One relocation subsidy per unit. The applicant shall be required to pay only one relocation subsidy per unit, regardless of the number of persons living in the unit, or the type of relocation benefit provided (i.e., senior tenant or non-senior tenant).

(g) Annual conversion cap and unit allocation process.

- (1) No more than one hundred (100) apartment units shall be approved for conversion in any calendar year, except the Planning Commission may assign unused allocations from the immediately prior year and may also borrow up to twenty (20) units in allocations from future years to a) facilitate completion of a project in one phase or one less phase than would otherwise be possible; or b) promote a higher degree of affordability than is required by the City's inclusionary housing ordinance. An unused allocation from a prior year may only be carried over and used during the next calendar year if, at that time, the apartment vacancy rate for the City is greater than 5%. If an allocation is not used in the next subsequent calendar year, it shall expire.
- (2) The Planning Division shall track both used and unused allocations. During the first week of the new calendar year, the Planning Director shall issue a statement as to the availability of residential condominium conversion allocations for the current calendar year as well as the four following calendar years. In addition, the Planning Director shall indicate the current apartment vacancy rate, the number of units of rental housing produced and the number of apartment units converted in the prior five calendar years. This information shall also be included in the annual report on the General Plan and Housing Element.
- (3) Applications for residential condominium conversion projects shall be accepted by the City between March 1 and March 15 of the current calendar year if unit allocations are available for the current year.
- (4) Projects with more than 100 units may request and be approved for phased final maps and annual allocations over one to five calendar years.
- (5) The Planning Commission may choose to allocate all or a part of a requested allocation. The Planning Commission may divide the available allocations between projects over a period not to exceed five years.

- (6) If more than one application is received, the Planning Commission shall prioritize those proposal(s) that provide the highest percentage of affordable units or the highest degree of affordability in excess of the applicable inclusionary requirement, e.g., more than the minimum 15% inclusionary requirement and/or affordability to low or very low income households. The Planning Commission may also include the following factors in making their determinations:
  - a. The degree to which the building and/or complex refurbishments will comply with "green" building practices; and
  - b. The degree to which the overall conversion project will promote General Plan and Redevelopment goals.
- (7) If the Planning Commission has previously granted approval of conversion applications and has allocated conversion units for five calendar years into the future, no further applications shall be accepted or considered until the next calendar year.
- (8) The Planning Commission may consider a reallocation of units for a given year when an applicant is unable to utilize an allocation and there are other developers that are ready to proceed in a given year.
- (h). Findings. The planning commission shall review the conditional use permit application for a residential condominium conversion and make all of the following findings before approving a project:
  - (1) The conditional use permit findings required in section 8-22509(a), (e), (f) and (g) have been met;
  - (2) The requirements in section 8-22135(f) have been met or waivers or modifications have been authorized; and
  - (3) The total number of residential condominium unit conversions for the calendar year is consistent with the limitations set forth in section 8-22135(g).

**Section 2.** Fremont Municipal Code Section 8-22135.05, Condominium, community apartment, stock cooperative and townhouse projects; homeowner's association requirements, is deleted in it's entirety.

**Section 3.** Fremont Municipal Code Section 8-22170 is amended by adding subsection (h) to read as follows:

**Sec. 8-22170. Basis and purposes.**

(a) – (g) [Text unchanged.]

(h) The limited production of rental housing and the displacement of rental housing units through conversions to ownership condominiums reduce the City's rental housing

supply which causes increased rental housing costs and decreased housing affordability. The provision of inclusionary units within condominium conversion projects represents housing ownership opportunities that help offset the loss of affordable rental units.

**Section 4.** Fremont Municipal Code Section 8-22171 (Inclusionary Housing, Definitions) is amended to read as follows:

**Sec. 8-22171. Definitions.**

(a) – (d) [Text unchanged.]

(e) *Construction cost index.* The Engineering News Record San Francisco Building Cost Index. If that index ceases to exist, the community development director shall substitute another construction cost index which in his or her judgment is as nearly equivalent to the original index as possible.

(f) *Consumer Price Index.* The U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index for All Urban Consumers for the San Francisco-Oakland-San Jose Metropolitan Statistical Area or if that index is discontinued, a successor index selected by the community development director.

(g) – (l) [Text unchanged.]

() . [Deleted in its entirety.]

(m) – (n) [Renumbered.]

(o) [Renumbered and revised as follows.] *Residential project.* Any planned district, subdivision map, conditional use permit or other discretionary city land use approval which authorizes seven or more living units or residential lots, or living units and residential lots which total seven or more in combination. In order to prevent evasion of the provisions of this chapter, contemporaneous construction of seven or more living units on a lot, or on contiguous lots for which there is evidence of common ownership or control, even though not covered by the same city land use approval, shall also be considered a residential project. Construction shall be considered contemporaneous for all units which do not have completed final inspections for occupancy and which have outstanding, at any one time, any one or more of the following: planned district, subdivision map, conditional use permit or other discretionary city land use approvals, or building permits, or applications for such an approval or permits. A condominium conversion under section 8-22135 is considered a residential project and is subject to this chapter.

**Section 5.** Fremont Municipal Code Section 8-22173 (Incentives) is amended as follows:

**Sec. 8-22173. Incentives.**

Residential projects which comply with this article and do not request a density bonus pursuant to article 21.8 may receive the following incentives:

(a) Subject to approval of the community development director or designee, for-sale affordable units may have different interior finishes and features than market rate units in the same residential project, so long as the finishes and features are durable, of good quality and consistent with contemporary standards for new housing, and may be smaller in aggregate size than market rate units in the same residential project. Notwithstanding the above, all such units shall meet the criteria set forth in section 8-22175(c).

(b) – (c) [Text unchanged.]

**Section 6.** Fremont Municipal Code Subsection 8-22174 (Time performance required)  
Subsection (a) is amended to read as follows:

**Sec. 8-22174. Time performance required.**

(a) No building permit shall be issued for any market rate unit until the permittee has obtained permits for affordable units sufficient to meet the requirements of section 8-22172, or received certification from the community development director or the director's designee that the permittee has met, or made arrangements satisfactory to the city to meet, an alternative requirement of section 8-22177. No final inspection for occupancy for any market rate unit shall be completed until the permittee has constructed the affordable units required by section 8-22172, or completed corresponding alternative performance under section 8-22177. The time requirements set forth in this subsection for issuance of building permits for market-rate units and for final inspections for occupancy for market-rate units may be modified to accommodate phasing schedules, model variations, or other factors in a residential project, if the city determines this will provide greater public benefit and an inclusionary housing regulatory agreement acceptable to the community development director or the director's designee pursuant to section 8-22176 so provides.

(b) [Text unchanged.]

**Section 7.** Fremont Municipal Code Section 8-22175 (Requirements for affordable units)  
Subsections (b) and (c) are amended to read as follows:

**Sec. 8-22175. Requirements for affordable units.**

(a) [Text unchanged.]

(b) The affordable units which are constructed in for-sale projects shall be sold at affordable housing cost for owner-occupancy to households whose income does not exceed one hundred and ten percent of area median income, adjusted for household size, or offered for rent pursuant to the terms of section 8-22177(a), provided that such units may be sold at affordable housing cost for owner-occupancy to households whose income does not exceed one hundred and twenty percent of area median income when the community development director, or the director's designee determines that is necessary to secure households able to qualify for mortgages to purchase the units.

(c) Subject to section 8-22177(a), affordable units shall be comparable in overall number of bedrooms, proportion of units in each bedroom category, quality of exterior appearance and overall quality of construction to market rate units in the same residential project. Overall unit size may be somewhat smaller but should be generally representative of the unit sizes within the market rate portion of the development and acceptable to the community development director or designee. Interior features and finishes in affordable units shall be durable, of good quality and consistent with contemporary standards for new housing. Affordable units shall be dispersed throughout the residential project in a manner acceptable to the city.

**Section 8.** Fremont Municipal Code Section 8-22176 (Continued affordability; city review of occupancy) Subsections (a), (b) and (d) are amended to read as follows:

**Sec. 8-22176. Continued affordability; city review of occupancy.**

(a) Regulatory agreements acceptable to the community development director or the director's designee and, if the affordable units are designated for owner occupancy, resale restrictions, deeds of trust and/or other documents acceptable to the community development director or the director's designee, all consistent with the requirements of this chapter, shall be recorded against affordable owner occupied units and residential projects containing affordable rental units. These documents shall, in the case of affordable units which are initially rented, be for a term of ninety-nine years (or, if shorter, for so long as the project remains standing) and in the case of affordable units which are initially sold, be for a term of thirty years. In the case of affordable owner-occupied units which are transferred during the required term, renewed restrictions shall be entered into on each change of ownership, with a thirty year renewal term. The forms of regulatory agreements, resale restrictions, deeds of trust and other documents authorized by this subsection, and any change in the form of any such document which materially alters any policy in the document, shall be approved by the community development director or the director's designee prior to being executed with respect to any residential project.

(b) In the case of units which are initially owner-occupied, the documents required by subsection (a) may not authorize subsequent rental occupancy on terms other than those

provided in section 8-22175(a), except in hardship cases as provided in an inclusionary housing regulatory agreement acceptable to the community development director or the director's designee pursuant to section 8-22176. For rented affordable units, the documents required by subsection (a) shall provide for continued occupancy for limited periods by households occupying the units, whose incomes increase during their occupancy so that they exceed the maximum otherwise permitted for the unit.

(c) [Text unchanged.]

(d) ....If the city or its designee maintains a list of, or otherwise identifies, eligible households, initial and subsequent occupants of affordable units shall be selected first from the list of identified households, to the maximum extent possible, in accordance with rules approved by the community development director or the director's designee....

**Section 9.** Fremont Municipal Code Section 8-22177 (Alternatives to on-site construction) Subsections (b), (c) and (d) are amended to read as follows:

**Sec. 8-22177. Alternatives to on-site construction.**

(a) [Text unchanged.]

(b) *Off-site construction.* Construct, or make possible construction by another developer of, units not physically contiguous to the market-rate units (or units that are physically contiguous to the market-rate units if the city determines this will provide greater public benefit and if an inclusionary housing regulatory agreement acceptable to the community development director or the director's designee pursuant to section 8-22176 so provides) and equal or greater in number to the number of affordable units required under section 8-22174. Off-site construction pursuant to this subsection shall be approved only if:

(1) Approval has been secured for the off-site units not later than the time the residential project is approved and completion of the off-site units is secured by a requirement that final inspections for occupancy for the related market-rate units be completed after those for the affordable units, provided that the time requirements set forth in this subsection for final inspections for occupancy for market-rate units may be modified to accommodate phasing schedules, model variations, financing requirements, or other factors in a residential project for the off-site units, if the city determines this will provide greater public benefit, and if an inclusionary housing regulatory agreement acceptable to the community development director or the director's designee pursuant to section 8-22176 so provides;

(2) The off-site units will be greater in number, larger or affordable to households with lower incomes than would otherwise be required in section 8-22172;

(3) Financing or a viable financing plan is in place for the off-site units; and

(4) In the event the off-site units receive any public assistance, the developer of the residential project will contribute to the off-site units' economic value equivalent to the value of making on-site units in the developer's residential project affordable. The city may require that completion of off-site units shall be further secured by the developer's agreement to pay an in-lieu fee in the amount due under subsection (d) in the event the off-site units are not timely completed.

(c) [Text unchanged.]

(d) *In-lieu fee.* To the extent the residential project consists of for-sale units on lots whose average size is ten thousand square feet or more, on a site designated residential low density, residential very low density or open space by the general plan, pay an in lieu fee.

(1) Fees shall be paid upon issuance of building permits for market-rate units in a residential project. If building permits are issued for only part of a residential project, the fee amount shall be based only on the number of units then permitted.

(2) The initial fee schedule shall be set by the city fee resolution or other action of the city council so that the fee amounts are sufficient to make up the gap between: (i) the amount of development capital typically expected to be available based on the amount to be received by a developer or owner from affordable housing cost or affordable rent, and (ii) the anticipated cost of prototypical affordable units.

(3) The city council may annually review the fee authorized by this subsection (d) by resolution, and may, based on that review, adjust the fee amount. For any annual period during which the council does not review the fee authorized by this subsection, fee amounts shall be adjusted once by the community development director or the director's designee based on the construction cost index. Where payment is delayed, in the event of default or for any other reason, the amount of the in-lieu fee payable under this subsection (d) shall be based upon the fee schedule in effect at the time the fee is paid.

(4) No final inspection for occupancy shall be completed for any corresponding market-rate unit in a residential project unless fees required pursuant to this chapter shall have been paid in full to the city.

**Section 10.** CEQA. The City Council hereby determines that the Negative Declaration prepared for this ordinance has been completed in compliance with the requirements of the California Environmental Quality Act (CEQA) and reflects the independent judgment of the City, and finds that adoption of the ordinance will have no significant negative impact on the



area's resources, cumulative or otherwise. The Director of Community Development shall file a Notice of Determination with the County Clerk pursuant to CEQA guidelines.

**Section 11.** Severability. In the event any court of competent jurisdiction holds any provision of this ordinance invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provisions hereof. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases or portions are declared invalid or unenforceable.

**Section 12.** Publication and Posting. The City Clerk has caused to be published a summary thereof, prepared by the City Attorney under section 36933(c) of the Government Code, once, in *The Argus*, a newspaper of general circulation printed and published in Alameda County and circulated in the City of Fremont, at least five days before the date of adoption. A certified copy of the full text of the ordinance was posted in the office of the City Clerk since at least five days before this date of adoption. Within 15 days after adoption of this ordinance, the City Clerk shall cause to be again published in *The Argus* the summary of this ordinance with the names of those City Council members voting for and against the ordinance; and the City Clerk shall post in the office of the City Clerk a certified copy of the full text of this adopted ordinance with the names of those City Council members voting for and against the ordinance.

The foregoing ordinance was duly introduced before the City Council of the City of Fremont, County of Alameda, at the meeting of the City Council of such City, held on the 26th day of September 26, 2006, and finally adopted at a regular meeting of said Council held on the day of September, 2006, by the following vote, to wit:

AYES:

NOES:

ABSTAINED:

ABSENT:

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Assistant City Attorney